IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5728 OF 2005

Shri Dinkar Ganapati Sail ..Applicant
Vs.
Alpesh Babulal Shah and anr. ..Respondents

Mr. V.B. Tapkir for applicant.
Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 14, 2007.

P.C.:

1. Heard Mr. Tapkir the learned counsel for the applicant who is seeking leave to appeal against the order of acquittal passed by the learned JMFC at Pune on 29/4/2005 in C.C. No. 1763 of 2003.

2. It was the case of the complainant, the present applicant, that cheque bearing no.214807 dated 4/6/2003 was issued to him by the accused in discharge of the loan liability of Rs.50,000/- and the said amount of loan was paid to the accused by the complainant on 3/9/2001 and the said cheque was dishonoured and, therefore, he filed the complaint

under Section 138 of the Negotiable Instruments Act, 1881. The said cheque was marked Exh.21 before the trial court.

3. The accused took the defence that on 3/9/2001 the complainant had given to him hand loan of Rs.50,000/- and the same was repaid by him in August 2002. Thereafter he approached the complainant for fresh loan sometimes in the first week of June, 2003 and the complainant again put the same condition that the accused will have to give one blank cheque as security and accordingly the accused issued the cheque dated 4/6/2003 (Exh.21) and on return of the earlier loan on 3/9/2001, the earlier cheque bearing No.220344 dated 29/8/2001 was returned to the accused. The accused further contended that after giving the cheque at Exh.21, when he demanded the loan amount from the complainant, he went on dodging and without the knowledge of the accused the cheque at Exh.21 was deposited with the bank for encashment. The trial court noted that in the complaint filed by the complainant there was no mention of the cheque at Exh.29 and it was produced by the accused to discharge

his burden to prove that there was no legally enforceable liability against the cheque at Exh.21. In his cross-examination, when the complainant was asked as to how the cheque at Exh.29 was in the custody of the accused, he stated that by oversight he could not mention anything in the complaint but he admitted that it was drawn in his favour. The trial court, therefore, accepted that the first loan dated 3/9/2001 having been discharged and the cheque at Exh.29 having been returned, the cheque at Exh.21 which was dishonoured could not have been issued against the legally enforceable pecuniary liability and, therefore, the complaint was dismissed.

4. The reasoning set out by the trial court in support of the order of acquittal does not call for reconsideration by this court and hence, leave to appeal is hereby refused.

(B.H. Marlapalle,J.)